

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION

DEATH PENALTY CASE

2007 NOV 19 AM 10:33

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLERK OF COURT

BILLY JACK CRUTSINGER,
Petitioner,

X

X

X

VS.

X

X

NO.: _____

NATANIEL QUARTERMAN, Director,
Texas Department of Criminal
Justice, Correctional Institutions
Division,
Respondent.

X

X

X

X

X

**MOTION TO WITHDRAW AS COUNSEL AND APPLICATION AND BRIEF FOR
APPOINTMENT OF NEW COUNSEL TO REPRESENT PETITIONER IN HABEAS
CORPUS PROCEEDINGS UNDER 28 U.S.C. SEC. 2254 INVOLVING A
STATE PRISONER UNDER SENTENCE OF DEATH**

Comes Now, Richard Alley, State Court-Appointed Habeas
Corpus counsel for the Petitioner, Billy Jack Crutsinger, TDC #
999459 in the above-styled and numbered cause submits his Motion
and Brief to Withdraw as Counsel for the Petitioner together with
the Petitioner's Application for Counsel to represent him in 28
U.S.C. Sec. 2254 proceedings challenging his State Court sentence
of Death as follows:

1. The jurisdiction of this Court is invoked pursuant to 21
U.S.C. Sec. 848(q) [or its equivalent provision] to appoint
counsel in death penalty habeas corpus proceedings to be
initiated under 28 U.S.C. Sec. 2254 in this Court.

2. The Petitioner was tried and convicted of Capital Murder

in the 213th Judicial District Court of Tarrant County, Texas wherein his punishment was assessed as Death in Cause Number 0885306D. Appeal was automatic to the Court of Criminal Appeals who affirmed the conviction on direct appeal in *Crutsinger v. State*, 206 S.W.3d 607 (Tex. Crim. App. 2006), prior hereto.

3. Undersigned counsel was appointed by the State convicting Court to represent the Petitioner in initial post-conviction habeas corpus proceedings pursuant to Tex. Code Crim. Proc. Art. 11.071. The Court of Criminal Appeals of Texas denied habeas corpus relief thereon to the Petitioner in an Order signed on November 7, 2007 in Cause Number WR-63,481-01, a copy of which is appended hereto and incorporated herein by reference for all purposes.

4. Under the provisions of Tex. Code Crim. Proc. Art. 11.071 [Sec. 2(e)] undersigned counsel is required to apply to withdraw as counsel or seek to have counsel appointed to represent the Petitioner herein within 15 days of the Order denying state court habeas corpus relief to the United States District Court having jurisdiction over the matter, which in this case would be this Court. This application is made to this Court in compliance with the requirements of said State law and the prior State Court Order of appointment as habeas corpus counsel hereinabove referenced.

5. The Petitioner seeks to continue to challenge his

conviction and sentence of death in initial habeas corpus proceedings under 28 U.S.C. Sec. 2254 in this Court.

6. The Petitioner is and remains indigent and requests the appointment of counsel to represent him in the future proceedings to be had in this Court referenced above. An Affidavit to Proceed in forma Pauperis is attached hereto or will be attached hereto upon receipt from the Petitioner in support of his indigent status. On November 8, 2007 such affidavit was mailed to the Petitioner to be completed by him and returned to counsel for filing with the Court in support of this motion.

7. Undersigned counsel requests permission to withdraw as counsel herein and does not wish to be appointed as counsel for the Petitioner in this Court.

8. This is the Petitioner's first request for this relief and the Petitioner submits that the requested relief herein is not sought solely for purposes of delay but so that justice might be done. The Petitioner and undersigned counsel submit that no party would be harmed by the granting of the requested relief herein.

CONCLUSION

WHEREFORE, the Petitioner prays that this Court, allow undersigned counsel to withdraw as counsel in this Court and for the appointment of new counsel to represent the Petitioner in all further proceedings in this Court.

Respectfully submitted,

BY: 


RICHARD ALLEY
SBN 01078010

THE MALLICK TOWER
ONE SUMMIT AVENUE, SUITE # 410
FORT WORTH, TEXAS 76102-2611
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ATTORNEY FOR THE PETITIONER

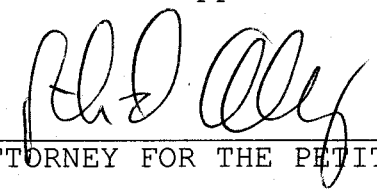
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion and Brief has been mailed by Certified Mail, Return Receipt Requested, to the Counsel for the State herein, Mr. Greg Abbott, Attorney General of Texas, P.O. Box 12405, Capitol Station, Austin, Texas 78711-2405, on November 16th, 2007, in accordance with the rules governing the same.


ATTORNEY FOR THE PETITIONER

CERTIFICATE OF CONFERENCE

I hereby certify that I have prior to the filing of this motion been unavailable to conference with the Counsel for the Respondent herein successfully; but, that I reasonably believe that the Counsel for the Respondent is unopposed to the relief requested in this motion.


ATTORNEY FOR THE PETITIONER



SHARON KELLER
PRESIDING JUDGE

LAWRENCE E. MEYERS
TOM PRICE
PAUL WOMACK
CHERYL JOHNSON
MIKE KEASLER
BARBARA P. HERVEY
CHARLES R. HOLCOMB
CATHY COCHRAN
JUDGES

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITOL STATION
AUSTIN, TEXAS 78711

11/7/2007

LOUISE PEARSON
CLERK
512-463-1551

EDWARD J. MARTY
GENERAL COUNSEL
512-463-1597

Presiding Judge
213th Dist Court
401 W. Belknap
Ft. Worth TX 76196

No.: WR-63,481-01
Trial Court No.: C-213-007275-0885306-A
Styled: CRUTSINGER, BILLY JACK v. The State of
Texas

Dear Judge:

Enclosed herein is an order entered by this Court regarding the above-referenced applicant.

If you should have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Edward J. Marty'. The signature is written in a cursive style with a long horizontal line extending from the end.

Edward Marty
General Counsel

EJM/bh

cc: Becky Price
Assistant Director
Records & Classifications
P. O. Box 99
Huntsville, TX 77340

Presiding Judge

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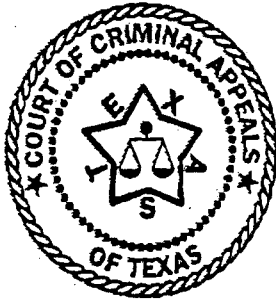
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Tim Curry
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Ft. Worth, TX 76102

Tarrant County District Clerk
THOMAS A. WILDER
401 W BELKNAP
Fort Worth, TX 76196



IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. WR-63,481-01

EX PARTE BILLY JACK CRUTSINGER

ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE
NO. C-213-007275-0885306-A IN THE 213TH DISTRICT COURT
TARRANT COUNTY

Per Curiam.

ORDER

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.

On September 25, 2003, a jury convicted applicant of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, and the trial court, accordingly, set punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Crutsinger v. State*, 206 S.W.3d 607 (Tex. Crim. App. 2006). Applicant presents eighteen allegations in his

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application in which he challenges the validity of his conviction and resulting sentence. Although an evidentiary hearing was not held, the trial judge entered findings of fact and conclusions of law. The trial court recommended that relief be denied.

This Court has reviewed the record with respect to the allegations made by applicant. We adopt the trial judge's findings and conclusions. Based upon the trial court's findings and conclusions and our own review, the relief sought is denied.

IT IS SO ORDERED THIS THE 7TH DAY OF NOVEMBER, 2007.

Do Not Publish

A True Copy
Attest:
Louise Pearson, Clerk
Court of Criminal Appeals of Texas
By: _____
Deputy

